

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GERALD JEROME POLK,

Petitioner

v.

WILLIAM HUTCHINGS, et al.,

Respondents.

Case No.: 2:21-cv-00513-RFB-DJA

**Order Dismissing the Petition without
Prejudice**

In Gerald Jerome Polk's pro se 28 U.S.C. § 2254 habeas corpus petition, Polk challenges his conviction pursuant to a guilty plea of charges including voluntary manslaughter with use of a deadly weapon; the state district court sentenced him to an aggregate term of 10 to 26 years. (ECF No. 9, Exhs. 50, 56.)¹ In August 2022, the Court granted respondents' motion to dismiss in part, concluding that some claims were unexhausted. (ECF No. 35.) Because the petition contained exhausted and unexhausted claims, the Court directed Polk to choose to either: submit a sworn declaration voluntarily abandoning the unexhausted claims in his federal habeas petition, and proceed only on the exhausted claims; return to state court to exhaust his unexhausted claims, in which

¹ Exhibits referenced in this order are exhibits to respondents' motion to dismiss, ECF No. 18, and are found at ECF Nos. 19-30.

1 case his federal habeas petition would be denied without prejudice; or file a motion asking
2 this court to stay and abey his exhausted federal habeas claims while he returns to state
3 court to exhaust his unexhausted claims. In response, Polk filed a motion for stay and
4 abeyance in order to return to state court to exhaust his unexhausted claims. (ECF No.
5 36.)

6 Because Polk failed to demonstrate good cause for his failure to exhaust the
7 claims, the Court denied the motion for stay. (ECF No. 41.) The Court gave Polk 30 days
8 to either: (1) inform this court in a sworn declaration that he wishes to formally and forever
9 abandon the unexhausted grounds for relief in his federal habeas petition and proceed
10 on the exhausted grounds; OR (2) inform this court in a sworn declaration that he wishes
11 to dismiss this petition without prejudice in order to return to state court to exhaust his
12 unexhausted claims. (Id. at 4-5.)

13 Polk has now filed a sworn declaration stating that he wishes to dismiss this federal
14 petition without prejudice in order to return to state court to exhaust his unexhausted
15 claims. (ECF No. 42.) The Court therefore dismisses his petition without prejudice.

16 **IT IS THEREFORE ORDERED** that the Clerk of Court substitute Warden Gabriela
17 Najera for respondent William Hutchings.

18 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** without prejudice.

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1 **IT IS FURTHER ORDERED** that the Clerk send to petitioner one copy of the
2 petition (ECF No. 9).

3 **IT IS FURTHER ORDERED** that the Clerk enter judgment accordingly and close
4 this case.

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6 DATED: 23 May 2023.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE